

FREMONT BOARD OF SELECTMEN**03 JANUARY 2008****APPROVED 01/17/2008**

Gene Cordes called the meeting to order at 6:10 pm. Present were Selectmen Gene Cordes, Donald Gates Jr, and Peter Bolduc; Town Administrator Heidi Carlson; and Public Keith Stanton who videotaped the meeting.

Selectmen began by reviewing the agenda.

OLD BUSINESS

1. Copies of the minutes for 27 December 2007 were distributed for Board members to read. They took time to read through them. Amendments to the minutes were discussed, on pages 1, 2, and 3 to correct typographical errors, and detail related to the Building Inspector's letter to Fred LeClair. There was also a correction needed to Session III of the non-public session minutes. Given that those minutes had been sealed, Selectmen felt they should return to non-public session pursuant to the same article, to amend them. At 6:20 pm, motion was made by Bolduc and seconded by Gates under NH RSA 91-A:3 II (c) to discuss revisions to the minutes of that non-public session. The vote was unanimously approved 3-0.

Keith Stanton left the meeting at this time.

At 6:25 pm motion was made to return to public session by Bolduc. Gates seconded and the vote was unanimously approved 3-0.

Stanton returned to the meeting.

With changes made to the public minutes as discussed, Gates moved to approve the minutes of December 27, 2007 as amended including Sessions I and II of non-public session; and the minutes of the non-public session III (sealed) as amended. Bolduc seconded and the vote was unanimously approved 3-0.

At 6:30 pm Mark and Brian Prescott came in to the meeting. Mark Prescott said that he has some final arrangements for his Eagle Scout Project at Glen Oakes. The major change is the parking area that had been discussed before. Earlier emails were reviewed to find that the area adjacent to the cul-de-sac at the end of Andreski Drive could be used for parking as it is Town Property. Vehicles could not be parked in such a way as to impede any traffic on the travel way.

Prescott submitted a sketch of his final proposal for the Selectmen to review, and a copy of the sketch and his detailed proposal were copied for the Town's file.

Prescott said he is planning to build the information board this winter and work on installation in the spring when the weather is amenable to outdoor work.

Selectmen were supportive of the project and asked him to come back if he needed any further help as he went along. Cordes also said that the Conservation Commission and Open Space Committee would be pleased to help, and were looking forward to the project being in place, and would also likely be willing to help if needed.

The Board has reviewed the project and has accepted it as proposed by Mark Prescott as per sketch and detail submitted today. (Neither item was dated, but was stamped received by the Town with today's date for the record).

Bolduc moved to have Cordes sign the Project Plan form for Prescott's Eagle Scout book. Gates seconded and the vote was approved 3-0. Cordes signed the form and a copy was kept in the file.

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The Prescott's left the meeting at 6:42 pm. Dick Heselton came into the meeting at that time.

NEW BUSINESS

1. There was discussion about making provisions for payroll and accounts payable manifests for next week with no scheduled meeting and two of the Board members out of town. Gates moved to authorize Carlson and Bolduc to review and approve the manifests next week, in the absence of Cordes and Gates. Bolduc seconded and the vote was unanimously approved 3-0. The Board will review and sign the actual manifests at the next regular meeting on January 17, 2008.

2. Selectmen reviewed the accounts payable manifest dated 12/28/2007 in the amount of \$49,930.23 and the accounts payable manifest dated 01/04/2008 in the amount of \$4,271.68. Gates moved to approve the 2007 manifest in the amount of \$49,930.23. Bolduc seconded and the vote was unanimously approved 3-0. Gates moved to approve the 2008 manual manifest in the amount of \$4,271.68. Bolduc seconded and the vote was unanimously approved 3-0.

Chief Heselton requested a non-public session on a personnel matter. Gates moved to enter 91-A: 3 II (c) to discuss matters which if discussed in public could adversely affect a person's reputation. Bolduc seconded and the vote was unanimously approved 3-0 at 6:48 pm.

Keith Stanton left the meeting at this time.

At 7:10 pm Bolduc moved to return to public session. Gates seconded and the vote was unanimously approved 3-0.

Keith Stanton returned to the meeting, Jay Somers joined the meeting, and Chief Heselton left the meeting.

Gates then moved to seal the minutes of Session II of the non-public session, indefinitely. Bolduc seconded and the vote was unanimously approved 3-0.

NEW BUSINESS CONTINUED

3. The next Carbon Coalition (Energy group) meeting has been posted for 7:00 pm on Tuesday January 15, 2008. No formal committee has yet been appointed.

Neal Janvrin came into the meeting at approximately 7:14 pm.

4. Abatements reviewed by the Assessor with recommendations to the Board:

a. Mark & Mary Haskin 58 Godfrey Lane 04-094.035

Assessor inspected the subject property in reference to concern about inaccurate measurements leading to the value. Assessor reviewed applicant's private fee appraisal and re-inspected the property to find that the fee appraisal had it incorrectly listed, and the Town's measurements of the dwelling were correct. In the re-inspection, a deck size was corrected and bathroom count updated, resulting in a slightly higher assessment which will go on record for the 2008 tax year. Assessor's recommendation is to deny the abatement as it was not found to be disproportionately assessed.

Motion was made by Gates to deny the abatement as recommended by the Assessor. Bolduc seconded and the vote was unanimously approved 3-0.

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b. Jerry & Cheryl Bolduc 427 Whittier Drive 03-169.024

Applicant filed an abatement in 2005 at which time all information was updated and an abatement granted for items corrected. During 2007 inspection, all property information listing was found to be correct, and there was no evidence that the value assessed is incorrect. Assessor's recommendation is to deny the abatement as it was not found to be incorrectly or disproportionately assessed.

Motion was made by Gates to deny the abatement as recommended by the Assessor. Bolduc seconded and the vote was unanimously approved 3-0.

c. Paul Shubert 58 Tibbetts Road 07-012

Applicant applied based on the April 2007 flooding. Assessor did an inspection, and explained to the homeowner the issues surrounding the date of the flooding and its effect on value. Assessor did pick up some areas of the home that needed to be adjusted due to conditions found in the home. Assessor is recommending an abatement in value of \$16,500 be granted for changes to the way the home is listed, resulting in a tax abatement of \$350.30.

Motion was made by Gates to grant the abatement in the amount of \$350.30, as recommended by the Assessor. Bolduc seconded and the vote was unanimously approved 3-0.

During Department Head session, Janvrin expressed concern about the concrete floor in one of the holding cells at the Complex. He said there were a lot of cracks in the floor, despite the fact that the room does not get used all that often. There was discussion about having the two holding cell floor sealed.

5. Selectmen reviewed the folder of incoming correspondence.

Peter Bearse came into the meeting at 7:20 pm.

At 7:22 pm a motion was made to recess until the time of the public hearing at 7:30 pm.

At 7:30 pm Selectmen called the Cable contract public hearing continuation to order. Present were Selectmen Gene Cordes, Donald Gates Jr, and Peter Bolduc; Town Administrator Heidi Carlson, Jay Somers from Comcast; Cable Committee members Neal Janvrin, Keith Stanton, Peter Bearse, and Larry Morse.

The original public hearing was posted, opened and began on December 13, 2007. Cordes said that the history on that meeting was that it was opened and had been continued due to inclement weather that evening and lack of attendance.

Cordes discussed walking through the contract as presented. Bearse offered that he had some comments to offer ahead of that, and came up to the table. Copies of the most recently revised contract (dated 01/03/08 on the front cover) were available for all to peruse.

Bearse said that Brande McLean was now at Exeter Hospital, and had sent New Year greetings to everyone.

Four of the seven members of the Cable Committee were present this evening.

Bearse said the Committee had fulfilled their obligation to the Town and to the Selectmen in having negotiated a renewal cable contract that was here for review this evening. He indicated that Section 7.3 of the contract has not yet been settled, having to do with the return line to Exeter. The issues here are

whether we should specify a not-to exceed cost of the estimate of \$26,400 for construction of that return line.

Bearse suggested allowing for cost indexing (on the cost of future construction) for protection of both Comcast and the Town, if there are increases due to items outside their control. He said most of the Committee members agreed with that language, but that he had not gotten feedback from Committee members on wording currently in the contract (a revised printed copy dated 01/03/08).

Bearse added that he feels this is a matter for legal counsel to review. Bearse feels it is a matter of whether we can hold Comcast to the cost estimate, and also an issue which came up in another part of 7.3 (not noted here) is how (or whether) tapes would be adequately played back in the interim period when the line is being constructed.

Bearse said that part of the proposition here (in terms of offering a negotiation option) is the matter of equipment for playing tapes. Bearse said that Comcast has now adopted a corporate policy and they are offloading the tape rebroadcasting option to the towns once the contract is signed. This would mean that the Town would have to take responsibility for tape playback (or live broadcast) as soon as the return line is constructed.

At this time Somers came to the table to further clarify what Bearse had said. He began by thanking the Cable Committee and said they have worked extremely hard on behalf of the Town.

He provided a quick overview of the license to include:

- ◇ It is a 10 year license.
- ◇ One half a percent of gross revenue is planned as a franchise fee, to be used to build up to a technology fund.
- ◇ There is a provision for a return line that will originate from the Town Hall, Ellis School, and the Fremont Public Library, back to the head end in Exeter.
- ◇ The Contract calls for one PEG access channel
- ◇ It allows for adding a second and third PEG access channel in the future.
- ◇ It contains language that gives the right to Selectmen to look at the franchise fee annually and decide whether it should be reduced.
- ◇ It allows for twice during the 10 year contract to see if the amount of the franchise fee should go up.
- ◇ The rest of license is language that is standard in all renewal contracts.

The entire contract was then reviewed by section, with highlighted areas of discussion reflected herein.

With regard to clarification of the tape playback earlier discussed, Somers said that once the contract is signed that the Town would then notify Comcast that we would like them to start construction of the return line. From there Comcast does paperwork, gets its engineering and finance departments on board, and Somers said that he projects by mid-summer that the construction of the return line would be done.

Once that is complete, Comcast then insures it works properly, and hands it over to the Town. At that point, the Town takes control of the channel to run, 24 hours a day, 7 days a week. At that point the Town would need playback equipment (which is not part of the contract, and is not currently owned by the Town).

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As a negotiating item, Somers suggested they (Comcast) give the Town of Fremont the playback machine currently housed in Exeter, as Comcast no longer had a need for said machine. Somers has not received authorization for such an option as yet.

There were differing estimates of what the ½% franchise fee would generate in revenue for the Town. Somers said \$2,000 to \$3,000 per year; and Keith Stanton had numbers that would be more like \$5,000 to \$6,000 per year based on estimated gross revenues of Comcast.

The Committee met with a supplier to get pricing of video equipment for live broadcast, and depending on what type you bought and how much, estimates ranged from \$8,000 to \$15,000 to set up three locations for live broadcast potential.

Acquisition of equipment would be a task for the Access Management Committee, to be formed once the contract is in place.

The ½% franchise fee is ultimately to be paid to the Town twice per year. Somers clarified that the gross revenue numbers for Comcast income does not include digital voice or internet.

It has not been decided yet whether or not Comcast would give the Town the tape playback equipment. Cordes asked if there was any way for Comcast to provide this equipment up front. Somers said that the equipment to be donated could be valued at \$5,000 to \$8,000; and would not commit to any up-front donations or provisions.

He asked if a grant from Comcast would help to get the Town going, and Somers said he would look into that. After discussion, it would be more like a loan as described, with Comcast providing equipment and the Town repaying them for that equipment once money was in the franchise fee account.

There was discussion about what incentive Comcast has to keep the cost of the return line modest. The Town does not want to be left exposed to cost increases in the cost of the return line construction.

Stanton said the term “estimated” only came up two to three weeks ago, and he felt that the Committee dealt in good faith that that was the hard number for that construction.

Somers disagreed with that, saying he gave the number to the Committee, sometime in September, and that the paper he provided clearly said “estimated” cost; and thought that Stanton may have missed that meeting.

Cordes asked what we could do to firm that number up prior to signing the agreement. Somers said he would look into that.

It was agreed by the Committee and the Selectmen that we need to look at the return line language and come up with a hard estimate for that cost. Cordes termed it a fixed price quote.

Somers then said he needs to look into the equipment loan provision, and whether or not Comcast can give the Town money to get going, including going live. Cordes said that how much it will cost and what is included is secondary to “is it possible?”

No one on the Committee or the Board was opposed to getting this going sooner rather than later. There was expression from several that to have a lapse in what has become a solid schedule of the tape playback and informational “ticker” would not be good for the Town. Carlson said that there has been a lot of interest and believed use of, the playback and viewers of the information ticker.

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Where it appears that if the cost exceeds the estimate the Town would be asked to pay the cost overrun, the Town was not comfortable with that and everyone wanted to see a fixed price quote for that return line and felt that the Town should not be charged with any cost over the estimate.

Somers said there were a lot of things they could do.

Bearse said in light of the fact that Somers is sensitive to the amount being in the contract that he had suggested it could be handled through a sidebar letter between Comcast and the Selectmen, agreeing to a not-to-exceed cost for that return line.

Stanton said that one of the decisions he felt needed to be made was whether or not Comcast or any successor or previous companies had fulfilled the obligations they had in the current contract (1988). Stanton said he was speaking as a ratepayer (not a Committee member) and said he did not believe they had fulfilled the original 1988 contract which said that Old Ridge Road was supposed to be wired. He also mentioned that the "service area" appendix in the 1988 contract indicated that the cable system shall provide service within that service area and it included Old Ridge Road and streets such as Midnight Sun Drive, Pulaski Drive, and San Antonio Drive. Stanton said that Comcast has now proposed to charge the town \$40,000 to add streets like Midnight Sun, Pulaski and San Antonio to the Fremont grid. Currently those three streets get Comcast cable feed from Raymond and do not have access to the "Fremont" channel 22.

Stanton further said that Continental shall provide equipment up to \$10,000 to the Town. He said that they gave us that equipment and then charged us for that equipment, which he did not believe was appropriate.

He referred to the Report of the 2002 Cable Committee, in which they stated that there is no franchise fee in this (1988) contract, yet ratepayers have been charged a franchise fee. Stanton felt that they should provide the equipment and not charge us for it.

Cordes said that clearly this is a new agreement and has a new beginning and ending date.

With regard to the Non-Exclusivity of Franchise in Section 2.4, there was discussion that if Comcast did not renew in Raymond, that Comcast would then be obligated to wire Midnight Sun, Pulaski, and San Antonio (for example) as the contract says they will provide service to every dwelling in Fremont that meets the density requirement.

There was further discussion about what would happen if Comcast was not in Raymond or Sandown, and that it was felt by the Town that all of those areas should be in the Fremont service area. Currently Treaty Court and Dakota Drive would get a Comcast feed, but it comes from the Town of Sandown. Cordes contended that this could be violating the terms of the non-exclusivity clause of this proposed contract.

The Town would like a guarantee that if Comcast left Raymond or Sandown that Comcast service would indeed be provided to all Fremont residents.

Carlson questioned Old Ridge Road and Somers said that no build-out to Old Ridge Road is included and further Somers said this was not possible. He said the cost is \$1,500 to \$2,000 per resident to get the feed out there, and then they would also pay additionally for the poles to get to their homes. The Town did not believe this was appropriate either.

Carlson indicated that Section 2.6 Pole and Conduit Attachment Rights, that it should be clearly pointed out for Counsel review to be in compliance with the Town's pole licensure process in accordance with

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NH RSA 231:161-163 and RSA 72:23. Currently Comcast nor the telephone companies pay any property taxes. Somers said that Comcast does not own any poles, they rent space there.

With regard to insurance, Selectmen reviewed the limits and indicated that the Town must be named as additional insured on those policies when sent to the Town annually.

With regard to Section 3.1, it was clarified that it is the Developer's responsibility on new construction to notify Comcast, and not the Town's.

With regard to Section 6.2 Service Interruptions, it is noted that the Subscriber must call to report outages longer than 24 consecutive hours in order to request a credit, it will not be done automatically. When asked how the Subscriber knows this is their responsibility, Somers replied that it goes out to customers once per year in a billing flyer of information.

With regard to Section 6.7 Somers will get more information on "polling and upstreaming" in response to questions about what this meant.

Carlson asked when rates can be adjusted. Somers indicated that rates are driven by a number of things, one of them is the way they (Comcast) conducts their business now. He said they have opened a new customer service center in Manchester and hire local people to answer the phones, which has a partial bearing on costs. He also added that the cost of programming affects it, and the cost of doing business, for such items as cost of gasoline to run their trucks also affect it.

Section 7.2 (d) was discussed in response to Carlson's questions about what is the "output" to determine what is the town's problem to fix, and what is the responsibility of Comcast. Somers indicated that from the wall jack into the building is the Town's (or homeowners) and outside that is Comcast's.

With regard to Section 7.3 there is still further work to be done to complete this. New language has been included and discussed, but not yet finalized.

With regard to Section 9.3, Selectmen indicated that locally we have language to have irrevocable letter of credit or cash escrow (performance bond) posted and would not normally accept a surety bond as referenced in the contract. Carlson will get the ILOC language to Somers for review and further consideration.

With regard to Section 9.4 dealing with franchise fees, Carlson asked if 1/2% was a normal return for the Towns and Somers said no. He said other communities, normally of this size would go between 1 and 2%. The FCC maximum is 5%.

The Cable Committee wanted to keep this number lower so as not to affect higher costs on the ratepayers.

Franchise fee payments are to be made twice per year to the Town.

Also under Section 9.4, item (e) had been removed from the first draft and needs to be added back in. That language is *(e) The Board of Selectmen, no more than twice during the term of the license, may hold a public hearing to demonstrate a need to increase the franchise fee,. By vote of the Board, after such public hearing, the franchise fee can be increased; with at least ninety (90) day notice to the franchisee.*

There was discussion on transfer and assignment in Section 9.9. Somers said that a successor company must be technically and administratively qualified and has the management to assume the contract. He

said that in most cases when there is a transfer of ownership, it is likely going to another company that is qualified and able to do it.

Carlson indicated that Section 10.3 with information for Notices, lists the Town's address as its physical address. Carlson explained that if it is to be sent by USPS certified mail (as indicated) that the Town's address also needs to include our legal mailing address of PO Box 120. Many of the Comcast "notices" come by UPS or other courier, so the street address would work fine for that.

Exhibit A was updated to reflect the correct addresses for the Fremont Public Library as 7 Jackie Bernier Drive; and for Ellis School as 432 Main Street.

To review, Somers listed the following as outstanding items:

Somers will look into the equipment loan / donation.

- ◇ The return line language needs to include fixed pricing.
- ◇ In Section 2.4 a feed from Raymond and Sandown needs to be clarified. The concern is that Section 2.4 speaks to non-exclusivity of the franchise, saying that there can be another franchise in Fremont but it cannot be more favorable than the Comcast contract. A feed from Raymond gets Raymond programming. Over the life of this contract as proposed, there could be another franchisee in Fremont that could have different terms that may be more favorable, but that the Town doesn't have any control over. The language says that Comcast will provide service.
- ◇ Whether or not it was met in the old license, the requirement to continue the line.
- ◇ Information on what the polling language means.
- ◇ Carlson will provide to Somers bonding language.
- ◇ The final draft of the contract must include the franchise fee in section 9.4 (e).

Carlson suggested that we need to do an extension for 30 days. Somers said that this was no problem, but also indicated that the existing arrangement remains the same and in place and that it was company policy if we continue to make progress on the contract renewal, subscribers would not see any disruption in cable services.

Selectmen and Somers agreed that we aggressively work on these changes and get things to legal counsel to review.

Somers offered that he would get a standard boiler plate 30 day extension that could be looked at on January 17th by the Selectmen at the next Board meeting.

Bearse said that the Cable Committee has been corresponding by email and telephone on these recent items and that they needed to schedule at least one more meeting.

Bearse said he feels Comcast should gift the tape playback machine to the Town since they will no longer need it.

Bearse left the meeting at approximately 9:15 pm, followed by Somers.

There was continued discussion on the contract.

It was estimated that by the end of calendar year 2008, we would have \$6,500 as a 1/2% franchise fee, and that we would not be able to buy all of the necessary equipment.

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Selectmen suggested that Carlson send an email and ask Somers what it will cost to run cable up Old Ridge Road and have him figure it in to the contract, it is an existing location in Fremont and all felt that it needed to be done in good faith, as that road has been there much longer than 20 years, and was on their Appendix A of the original service area.

It was suggested to also ask Somers to find out if the existing Raymond feed has the capability to be split to include Fremont cabling to those residents in Fremont.

It was noted that the distance for standard installation should be 175 feet, included in the Definitions, Section 1.1, Item (q) the same as it is in Section 3.1. (The number differs from 125 feet in the definitions, which is incorrect, to 175 feet in Section 3.1).

Stanton questioned if the tape rebroadcast equipment would be compatible with the new 2009 FCC regulations on HD technology. Carlson was directed to also send this question to Somers.

Carlson further discussed with the Board whether this should be sent to only the town's counsel, or to someone who specializes in cable issues. It had been suggested by a member of the Cable Committee this week to Carlson, that it be sent to an attorney in Boston who specializes in this type of work. Selectmen asked Carlson to discuss this with Attorney Ryan and be sure he is comfortable and has done this before. It was decided to wait until more of the questions had been resolved and the draft contract was closer to completion, before sending it to the Attorney. Selectmen also wanted to have an understanding of Attorney Ryan's availability for this contract review. The same would hold true for an outside specialist, if that route is taken.

Gates moved to close the public hearing at 9:30 pm.

COMING UP:

The Budget Committee meets on Wednesday January 9, 2008. They also meet with School District Officials on Saturday January 5, 2008 at 9:00 am.

The next regular meeting of the Board of Selectmen will be held on Thursday January 17, 2008 at 6:00 pm.

With no further business to come before the Board, motion was made by Bolduc and seconded by Gates to adjourn the meeting at 9:32 pm. The vote was unanimously approved 3-0.

Respectfully submitted,

Heidi Carlson
Town Administrator